



# PUBLIC NOTICE

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## DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

### WC Docket Nos. 19-51

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by CP-TEL Holdings, Inc. (CP-TEL), Campti-Pleasant Hill Telephone Co., Inc. (Campti), CP-TEL Network Services, Inc. (CPTN), and Epic Touch Co., Inc. (Epic Touch) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,<sup>1</sup> requesting consent to transfer control of CP-TEL and its wholly owned subsidiaries, Campti and CPTN, to Epic Touch.<sup>2</sup> On March 22, 2019, the Bureau released a Public Notice requesting comment on the Application.<sup>3</sup> The Bureau received no comments in opposition to a grant of the Application.

CP-TEL, a holding company, does not provide telecommunications services.<sup>4</sup> Campti is a rural incumbent local exchange carrier (LEC) providing services in portions of Natchitoches, Sabine, and Desoto Parishes in Louisiana.<sup>5</sup> Campti receives universal service support under the Alternative Connect America Cost Model (A-CAM).<sup>6</sup> CPTN provides competitive telecommunications services in Northwest Louisiana.<sup>7</sup> CPTN does not receive universal service support. CP-TEL, Campti, and CPTN are Louisiana corporations.<sup>8</sup>

<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

<sup>2</sup> Domestic Section 214 Application Filed for the Transfer of Control of Campti-Pleasant Hill Telephone Co., Inc. and CP-TEL Network Services, Inc. to Epic Touch Co., Inc., WC Docket No. 19-51 (filed Nov. 13, 2018) (Application). Applicants also filed an application for the transfer of authorizations associated with international services. Applicants filed a supplement to their domestic section 214 application on March 19, 2019. Letter from Tony S. Lee, Counsel for Epic Touch Co., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-51 (filed Mar. 19, 2019) (Applicants *Ex Parte* Letter). Any action on the domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>3</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Campti-Pleasant Hill Telephone Co., Inc. and CP-TEL Network Services, Inc. to Epic Touch., Inc.*, WC Docket No. 19-51, Public Notice, DA 19-208 (rel. Mar. 22, 2019).

<sup>4</sup> Application at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Universal Service Administrative Co., Tools, <https://www.usac.org/about/tools/fcc/filings/default.aspx>. See *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 842 (WCB Jan. 24, 2017) (*A-CAM Public Notice*). The Commission adopted a voluntary path by which rate-of-return carriers could elect to receive a fixed amount of universal service support under A-CAM, a forward-looking broadband cost model, for 10 years, in exchange for deploying broadband-capable networks to eligible locations. *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3090, para. 4, 3096-3117, paras. 20-79 (2016).

Epic Touch, a Kansas corporation, provides telephone and broadband services in portions of Kansas and Oklahoma through its affiliates.<sup>9</sup> Epic Touch owns 93.28 percent of Elkhart Telephone Co., Inc. (Elkhart Telephone), a rural incumbent LEC that provides service in Elkhart, Kansas, and Texas County, Oklahoma.<sup>10</sup> Elkhart Telephone did not elect to receive model-based support and receives cost-based universal service support for its incumbent LEC services.<sup>11</sup> The following Kansas trusts hold a 10 percent or greater interest in Epic Touch: Bob Boaldin Irrevocable Epic Trust (49.55 percent) and Dian Boaldin Irrevocable Epic Trust (49.55 percent).<sup>12</sup>

Pursuant to the terms of the proposed transaction, Epic Touch will purchase all of the issued and outstanding stock of CP-TEL.<sup>13</sup> Following the consummation of the transaction, Epic Touch will therefore control CP-TEL's wholly owned subsidiaries, Campti and CPTN.<sup>14</sup> Campti and Elkhart Telephone, together with their affiliates, have no overlapping or adjacent incumbent LEC service areas.<sup>15</sup>

*Discussion.* The Applicants request approval to consummate a transaction involving companies that receive high-cost universal service support under the different mechanisms of fixed model-based support and cost-based support. The Commission has found that these types of mixed support transactions could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.<sup>16</sup> When a company receiving a fixed level of support acquires or is acquired by a company receiving support based on its costs, the combined companies could, and in some instances might have an economic incentive to, shift certain shared or common costs from the model-based support company to the cost-based support company.<sup>17</sup> If cost shifting were to occur, the combined company, post-transaction, could obtain more high cost universal service support than the two companies did as separate entities, not because of any new investment, expense, or buildout, but rather solely because of the application of accounting procedures.<sup>18</sup> Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.<sup>19</sup> Moreover, providing additional universal service support to a company as a result of cost shifting solely because it acquired or merged with another company is not an efficient use of limited universal service

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<sup>7</sup> Application at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Applicants *Ex Parte* Letter at 1.

<sup>11</sup> Universal Service Administrative Co., Tools, <https://www.usac.org/hc/tools/default.aspx>.

<sup>12</sup> The beneficiaries, in equal shares, for both trusts are Trent Boaldin and Roxanna Boaldin Grimes, both U.S. citizens. Applicants state that neither Epic Touch nor any of its subsidiaries, the Bob Boaldin Irrevocable Epic Trust, the Dian Boaldin Irrevocable Epic Trust, Trent Boaldin, or Roxanna Boaldin Grimes hold a greater than 10 percent interest in any other domestic telecommunications provider. Applicants *Ex Parte* Letter at 1.

<sup>13</sup> Application at Attach. 1, p.3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at Attach. 2, p.1.

<sup>16</sup> *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Red 4780, para. 19 (2018). (*Hargray/ComSouth Order*).

<sup>17</sup> *Id.* at 4785-86, para. 20.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

resources.<sup>20</sup>

In the *Hargray/ComSouth Order*, in which the Commission approved a mixed support transaction, it sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.<sup>21</sup> The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support.<sup>22</sup>

In the proposed transaction, because Epic Touch, which is affiliated with a cost-based support company, seeks to acquire Campti, a fixed model-based support company, the potential for harm caused by cost-shifting is a transaction-specific harm. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.<sup>23</sup> The combined operating expenses of the post-consummation company's rate-of-return affiliates<sup>24</sup> shall be capped at the averaged combined operating expenses of the three calendar years preceding the transaction's closing date for which the operating expense data are available.<sup>25</sup>

The cap will apply to cost recovery under both HCLS and CAF-BLS and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS.<sup>26</sup> For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10 percent, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10 percent.<sup>27</sup> For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded.<sup>28</sup>

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<sup>20</sup> *Id.* at 4786, para. 21.

<sup>21</sup> *Id.* at 4788-90, paras. 26-31.

<sup>22</sup> *Id.* at 4789, para. 27, n.72.

<sup>23</sup> *Id.* at 4788-90, paras. 26-31.

<sup>24</sup> *See* 47 U.S.C. § 153(1).

<sup>25</sup> *Hargray/ComSouth Order* at 4788-89, para. 27. The cap will apply to the combined operating expenses of the post-consummation companies and any other existing rate-of-return affiliates that they may acquire during the time in which the condition is in effect (together, covered entities). To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct the covered entities to submit their relevant cost data to the National Exchange Carrier Association (NECA). We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to the Universal Service Administrative Company (USAC) within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in High-Cost Loop Support (HCLS) and Connect America Fund-Broadband Loop Support (CAF-BLS) for any covered entity pursuant to this Public Notice for each year following the effective date of this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We also direct all covered entities to provide USAC with an annual certification of compliance on or before December 31 of each year for the duration of the condition. With the certification, each covered entity must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by December 31 of each year. *Id.* at 4790, para. 31.

<sup>26</sup> *Hargray/ComSouth Order* at 4789, para. 28.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel Price Index (GDP-CPI) for the years in which the new cap remains in effect.<sup>29</sup> This cap shall remain in effect for seven years from the consummation of the transaction.<sup>30</sup> The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become model-based support companies at any point during the seven-year period.<sup>31</sup>

We find, upon consideration of the record, that grant of the Application listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.<sup>32</sup> Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice subject to compliance with the condition described above.<sup>33</sup>

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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<sup>29</sup> *Id.* at 4790, para. 30.

<sup>30</sup> The Commission has found seven years to be an appropriate period over which to monitor enforcement of the condition and to ensure that the combined entity, which will continue to receive support, does not shift costs from year-to-year. *Id.* at 4789-90, para. 29, fn.78. The cap will not apply if the parties do not consummate the proposed transactions.

<sup>31</sup> *Id.* at 4789-90, para. 29.

<sup>32</sup> *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

<sup>33</sup> The Applicants in this proceeding provide incumbent LEC services in their respective study areas. Within 30 days of closing the proposed transaction, they must notify USAC so that it can make any appropriate changes to the High Cost Universal Broadband (HUBB) on-line location reporting portal for universal service recipients.